

Service Date: February 22, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	UTILITY DIVISION
of the City of Great Falls, a)	
Municipality, for Authority to)	DOCKET NO. 90.10.66
Establish Increased Rates for)	
Sewer Service.)	ORDER NO. 5522g

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PROCEDURAL ORDER

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On January 14, 1991 the Montana Public Service Commission suspended the procedural order for Docket No. 90.10.66 because of the distribution of incorrect data. On January 28, 1991 the City of Great Falls distributed corrected data.

Under the authority of ARM 38.2.2702, and following issuance of a second proposed procedural order, the Commission enters this order setting forth the procedure to be followed in Docket No. 90.10.66.

In this order the term "parties" includes the Applicant, the City of Great Falls (hereinafter "the City") and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of all pleadings, motions, discovery and data requests, discovery and data responses, prefiled testimony and briefs shall be filed with the Commission and served on all parties. In the case of a filing directed to the Commission, such as motions, testimony and briefs, the original and ten (10) copies shall be filed with the Commission.

Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record. Parties must also provide the Commission and all parties with both a mailing and street address for purposes of facilitating such service. The parties may agree to limit service of discovery responses except for service upon the Commission.

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. Parties may make arrangements among themselves for the use of express mail.

Schedule

Unless otherwise herein specified, the following schedule shall apply in Docket No. 90.10.66:

- (a) January 14, 1991: Final day as a matter of right for written discovery and data requests directed to the City.
- (b) February 14, 1991: Final day for completion by the City of all answers and responses to the written discovery and data requests.

- (c) February 28, 1991: Final day for completion and service upon the City and other parties of prefiled testimony and exhibits.
- (d) March 12, 1991: Final day as a matter of right for written discovery and data requests directed to all parties by the City and intervenor data requests directed to other intervenors.
- (e) March 26, 1991: Final day for completion of answers by all parties to discovery and data requests made pursuant to paragraph 4(d).
- (f) April 10, 1991: Final day for service of rebuttal testimony by the City and testimony of other parties which is in rebuttal to testimony filed pursuant to paragraph 4(c).
- (g) April 26, 1991: Final day for written discovery and data requests directly relating to testimony filed pursuant to paragraph 4(f).
- (h) May 10, 1991: Final day for completion of responses to written discovery and data requests submitted pursuant to paragraph 4(g).
- (i) May 17, 1991: Final day for any party which intends to introduce as evidence, data requests or other discovery as part of its basic case, to notify all parties of the specific data requests or other discovery it plans to so introduce. Final day to inform the Commission of any proposed stipulation.
- (j) May 29, 1991: Opening day of hearing in Docket No. 90.10.66. The Commission intends the hearing in this Docket to begin directly after the hearing in Docket No. 90.10.67.

Intervention

Parties seeking to intervene after the Service Date of this Order, must file a Petition to Intervene with the Commission. The petition shall demonstrate (A) the position that the intervenor will take if the intervention is granted, (B) that the proposed intervenor has an interest in and is directly affected by this Docket, (C) that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and (D) good cause why the petition was not timely filed. (ARM Section 38.2.2401 et seq.).

Discovery

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests." The Commission urges all parties to conduct their discovery through the use of data requests as much as possible.

The Commission directs all parties to prepare data requests according to the following guidelines: Each party's data requests must be numbered sequentially throughout the Docket, beginning with the number one (1). In addition, data requests must include at the beginning of each request a short description (five words or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help the Commission to identify more quickly all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another. Multi-part requests may be used. Each part of the multi-part request should be denoted by a lower case letter (a, b, c, etc.). Requests should be limited to five (a-e) parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

The party receiving the written discovery or data request has five (5) days from receipt of the same within which to voice any objections it has to the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling or may schedule arguments on the objections. Failure to object will be deemed acceptance of the request.

In the event any requesting party is dissatisfied with the response to any written discovery or data request, such party must, within five (5) days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule argument on the objections. The Commission will issue its order either sustaining or overruling the objections. If objections are sustained, a time period will be set within which a satisfactory response must be made.

Submission of written discovery or data requests after the period established for the same will be allowed by leave of the Commission only. Such requests will not be

permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose related claims, or prohibiting him from introducing related matters in evidence;
- (b) An order striking pleadings, testimony or parts thereof, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

Testimony and Evidence

The Commission contemplates a progressive narrowing of issues as prefiled testimony proceeds from direct to rebuttal. Introduction of new issues or data in new areas will be carefully scrutinized and disallowed unless reasonably related to issues earlier identified in the application; in Commission orders or in testimony prefiled in conformance with this order.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record without the need of recitation by the witness. This procedure will eliminate retyping of prepared testimony into the hearing transcript.

All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

When cross-examination is based on a document, not previously filed with the Commission, copies of the document will be made available to the Commission unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

Parties may be permitted to present "live" rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony

of a public witness. Such testimony will be allowed only by leave of the presiding officer.

Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

The Commission anticipates scheduling an evening session of the hearing in order to facilitate public testimony. However, members of the public may also be allowed to testify during the main hearing. Attempts will be made to keep these appearances from significantly disrupting the technical phase of the hearing.

The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearing in this Docket will be used at the hearing.

Prehearing Motions and Conferences

Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

The Commission may, at any time prior to the hearing, set a final Prehearing Conference. At that prehearing conference there may be discussed, among other things, the feasibility of settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of the City at any time.

Witness Sequence List

The Applicant shall provide the Commission with one witness list indicating the sequence that witnesses will be called by the parties at the hearing. It shall be the responsibility of the Applicant and any other parties to this Docket to negotiate among themselves the witness sequence. The Applicant may inform the Commission and parties of the final sequence in writing or by telephone directed to the party's attorney of record, and Commission staff attorney.

DONE AND DATED THIS 19th day of February, 1991 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)